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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,252	01/10/2006	Matthias Pfüller	344/1/109	8000
170 7590 03/21/2008 RICHARD M. GOLDBERG 25 EAST SALEM STREET SUITE 419 HACKENSACK, NJ 07601			EXAMINER NDUBIZU, CHUKA CLEMENT	
			ART UNIT 3749	PAPER NUMBER
			MAIL DATE 03/21/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/564,252

**Applicant(s)**

PFULLER, MATTHIAS

**Examiner**

CHUKA C. NDUBIZU

**Art Unit**

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 3,5 and 6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4 and 7-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 December 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/808)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## DETAILED ACTION

### *Response to Amendment*

Applicant's amendments filed on December 19 2007 are hereby acknowledged.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
1. Claims 1, 2, 7-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Faltersack* 3,636,938 in view of *Wang* 6,155,162. *Faltersack* teaches the invention as claimed (figs. 1-5), a take-apart picnic grill comprising: two hollow profiles 17, 16 adapted to be disposed parallel to each other (fig 1), a plurality of rods 20 to connect the two hollow profiles so as to form a grilling surface (fig 1), and the hollow profiles including first 16 and second 17 tubes respectively, each with a diameter, the diameter of the first tube being sufficiently larger than the diameter of the second tube to allow

the second tube with the smaller diameter to be inserted inside the first tube with the larger diameter for transport purposes (column 2 line 21-34); and two connecting rods 21b and 24 to connect the two tubes so as to run through holes 18 in the two opposite tube walls at the ends of the tubes, each of said connecting rods being provided with a tightening arrangement 21a, 24a, 24c and 26 for pulling together the two tubes to form a stable grilling surface; (claim 2, 12 ) wherein the second tube with the smaller diameter has an inner diameter which is sized in such a way as to accommodate all other parts of the grill (column 2 line 25-27); (claim 7, 13 ) the picnic grill further comprising a notch at an end of one of the tubes 17 (where wing nut is positioned) capable of being used for cleaning the rods which form the grilling surface; (claim 8, 14) the grill further comprising caps 27 for sealing both ends of the first tube with the larger diameter; (claim 9, 15) wherein the first tube with the larger diameter is sealed (by cap) at one end and further comprising a cap 27 for closing off the other end of the first tube (figs 3 and 5); (claim 10, 16) wherein all the parts of the picnic grill are made from stainless steel (column 1 line 54); (claim 11, 17) wherein the tubes each has a circle cylindrical cross section (see fig 1), wherein both tubes have holes in a side facing the other tube to accommodate both ends of the rods serving as the grilling surface.

However, Faltersack does not teach a collapsible grill wherein a top quarter of a circumference of the other tube facing the one tube has slots to match the number of holes for accommodating opposite ends of the rods such that the opposite ends of the rods cannot be lifted vertically out of the slots of the other tube.

Wang discloses a grill rack (fig 1) with two rectangular brackets 4 for holding the rods 17, wherein one of the brackets has holes 42 in the side facing the other bracket to accommodate one end of the rods serving as the grilling surface, and top quarter of a circumference of the other bracket facing the one bracket has slots 40 (see fig 1) to match the number of holes for opposite ends of the rods such that the opposite ends of the rods cannot be lifted vertically out of the slots of the other tube. Examiner note that the shape of rectangular bracket versus the shape of the tube is irrelevant with regard to the objective of the invention; namely to facilitate the task of assembly and avoid vertical lifting. In re *Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) MPEP 2144.04 IV B.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Faltersack's grill by using holes on one side and slot on the other such that the opposite ends of the rods cannot be lifted vertically out of the slots of the other tube, in order to facilitate assembly and disassembly of the grill surface and avoid vertical lifting.

With regard to claim 7, the notch being at the end edge instead of at the end is a matter of rearrangement of parts that would not make a difference in the notch being usable for cleaning the rods. In re *Japikse*, 181. F.2d 1019, 86 USPQ 70 (CCPA 1950), MPEP 2144.04 VI C.

1. Claims 4, 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faltersack in view of Earl 3,461,634 and further in view of Lorbacher 3,191,592 and

Mathewson 934,557. Faltersack teaches the invention as claimed and as discussed above.

However, Faltersack does not teach a collapsible grill wherein, the other tube includes, an unbroken longitudinal slit on the side facing the one tube, and slots in one edge of the slit in which to place opposite ends of rods.

Earl discloses a collapsible grill (fig 1-7) wherein both tubes 24 and 26 have unbroken longitudinal slits (see figs 3 and 4) on them for accommodating rods 34 (fig 1).

Lorbacher discloses a grill surface (figs 1-4) including channels 24 and 25. 24 has holes 28 on it to take one of the rods. 25 has a slit (when covered by 31) and the slit has slots 30 to take the other ends of the rods.

Mathewson discloses a grill rack wherein, the two tubes C include, unbroken longitudinal slits and slots D where the rods B fit in (see figs 1-3).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Faltersack's grill by using holes on one side and slit with slot on the other in order to facilitate assembly of the rods and retaining them in position as taught by Lorbacher (column 2 lines 69-70).

### ***Response to Arguments***

Applicant's arguments filed on December 19 2007 have been fully considered but they are not persuasive. Applicant's argument that Faltersack does not disclose or suggest connecting rods with tightening arrangement has been fully considered. Faltersack discloses two connecting rods 21b and 24 to connect the two tubes so as to

run through holes 18 in the two opposite tube walls at the ends of the tubes, each of said connecting rods being provided with a tightening arrangement 21a, 24a, 24c and 26 for pulling together the two tubes to form a stable grilling surface. Faltersack further discloses a notch at an end of one of the tubes 17 (where wing nut is positioned) capable of being used for cleaning the rods which form the grilling surface.

Applicant's argument about Wang's bracket being rectangular has been considered. Faltersack's holes are modified by making similar slots Wang has that would prevent vertical lifting of the rods. Applicant's argument about the unbroken slit and slot has been considered. In addition to Earl, Lorbacher and Mathewson disclose the unbroken slit and slot as claimed and as discussed above.

Therefore, Applicant's claims do not distinguish Applicant's invention over the prior art of record.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHUKA C. NDUBIZU whose telephone number is (571)272-6531. The examiner can normally be reached on Monday - Friday 8.30 - 4.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve McAllister can be reached on 571-272-6785. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Chuka C Ndubizu/  
Examiner, Art Unit 3749

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/Steven B. McAllister/

Supervisory Patent Examiner, Art Unit 3749